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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,017	02/10/2004	Jon C. Alexander	076565-0135	9075
26371	7590	10/19/2007	EXAMINER	
FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5306			MOHANDESI, JILA M	
ART UNIT		PAPER NUMBER		
3728				
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10/19/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/776,017	ALEXANDER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Jila M. Mohandesu	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 20 August 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-41 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    Paper No(s)/Mail Date. \_\_\_\_\_  
3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_                    5) Notice of Informal Patent Application  
6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 24-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 24 recites the limitation "the first member" in line 11. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1-12 and 18-41 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (5,366,104) in view of Luburic (Pub. No. US 2002/0148846) and Nakamura et al. (US 4,848,575). Armstrong '104 discloses a hermetic storage system for containing wipes comprising: a flexible container (11) having a collar (flange 21 which extends outwardly away from outboard edge and has a generally upwardly facing surface 22 edge) having a first connector (rolled over section 19) surrounding an aperture; and an impermeable cover member (12) having a second connector (27); wherein the first connector includes one of a groove and a key and the second connector includes the other one of the groove and the key; wherein the groove

includes a first peripheral wall and a second peripheral wall, at least one of the first peripheral wall and the second peripheral wall being flexible and wherein the first peripheral wall includes an indentation and protrusion (see Figures 7-9 embodiments); and wherein the first connector and the second connector may be releasably engaged to provide a hermetic seal. See Figures 1-2 and 7-9 embodiments and column 2, lines 61-67 and column 3, lines 20-38. Armstrong '104 does not appear to teach the key to have a width greater than the distance between the protrusion and the second peripheral wall of the groove and at least one of the first peripheral wall and the second peripheral wall configured to flex in response to the key passing between the protrusion and the second peripheral wall and for the container to be made of flexible material conformable to the wipes contained therein and the collar and the cover made of a second material. Luburic discloses a hermetic storage system where the key has a width greater than the distance between the protrusion and the second peripheral wall of the groove and at least one of the first peripheral wall and the second peripheral wall configured to flex in response to the key passing between the protrusion and the peripheral wall for easier and tighter snapping action to provide a tighter hermetic seal (See Figures 6 and 7 embodiments and paragraph 0031). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a key and groove arrangement with the key having a width greater than the distance between the protrusion and at least one of the first peripheral wall and the second peripheral wall configured to flex in response to the key passing between the

protrusion to the container of Armstrong '104 as taught by Luburic to provided a better and tighter hermetic seal when the lid is closed on the body container.

Nakamura '575 discloses a resealable dispenser-container for wet tissues comprising a container, made of a flexible and impervious film sheet, and a tray/collar member, made of a second material harder than said container. The flexible sheet constituting the container body 11 may be a film made of synthetic resins such as polyethylene, polypropylene, polyamide, polyester, and polyvinyl chloride, and the film may be a single layer or a laminated layer. The film may be a laminated layer of the above-mentioned film and an aluminum foil or paper. Therefore, the container body 11 is deformable which will inherently be conformable to the wipes contained therein. The sheet constituting the container body 11 may also be gas impervious or liquid impervious depending on the kind of the liquid impregnated in wet tissues 3, i.e., fibrous materials impregnated with liquid cosmetics or a medicine, contained in the container body 11. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the container of Armstrong '104 from flexible film material and the collar and cover from a second material as taught by Nakamura '575, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

"[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way,

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using the technique is obvious unless its actual application is beyond that person's skill."

*KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1740, 82 USPQ2d 1396 (2007).

Claims 35-41 are directed to the obvious method of making the hermetic container of Armstrong as modified above.

With respect to claims 24, 30-32 and 35, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the collar separate from the container, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179, since applicant has not discloses any criticality as why the collar should be formed independent of the flexible container. Further more, the instant application discloses in paragraph [0031] that the collar may be permanently coupled to the flexible container or may be detachably (separately) coupled to the flexible container.

The determination of patentability in a product-by-process claim is based on the product itself, even though the claim may be limited and defined by the process. That is, the product in such a claim is unpatentable if it is the same as or obvious from the product of the prior art, even if the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985). A product-by-process limitation adds no patentable distinction to the claim, and is unpatentable if the claimed product is the same as a product of the prior art.

With respect to claims 8 and 38, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the cover independent from

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the collar, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

With respect to claims 9 and the shape of the container, it would have been an obvious matter of design choice to modify the shape of the container, since such a modification would have involved a mere change in the shape of a component which is only ornamental in function. "[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill." *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1740, 82 USPQ2d 1396 (2007). A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

6. Claims 13-17 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claim 1 above, and further in view of Ishikawa et al. (5,699,912). Armstrong '104 as modified above discloses all the limitations of the claims except for the second member defining a second aperture and a third member releasably engaging with the second member to form a continuous hermetic seal around the second aperture. Ishikawa '912 discloses a hermetic storage system for containing wipes where the second member defining a second aperture and a third member releasably engaging with the second member to form a continuous hermetic seal around the second aperture for allowing the wipes to be individually picked out and maintaining the remaining wipes in a sterilized condition. Therefore, it would have been

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obvious to one of ordinary skill in the art at the time the invention was made to provide the second member of Armstrong '104 with a second aperture and a third member releasably engaging with the second member to form a continuous hermetic seal around the second aperture as taught by Ishikawa '912 for allowing the wipes to be individually picked out and maintaining the remaining wipes in a sterilized condition.

"[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill." *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1740, 82 USPQ2d 1396 (2007).

### ***Response to Arguments***

7. Applicant's arguments filed 03/08/2007 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). "[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way,

using the technique is obvious unless its actual application is beyond that person's skill." *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1740, 82 USPQ2d 1396 (2007).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). "A combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1731, 82 USPQ2d at 1396. "When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability." *Id.*

### ***Conclusion***

**8. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

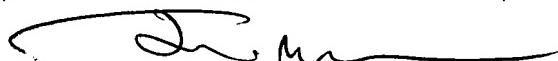
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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandes who's telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jila M Mohandes  
Primary Examiner  
Art Unit 3728

JMM  
October 15, 2007